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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE:

EAC 01 239 55782

Office: VERMONT SERVICE CENTER

Date **APR 01 2004**

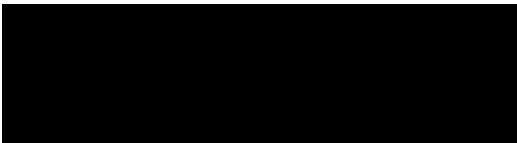
IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Jordan who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The director denied the petition, finding that the petitioner failed to establish that he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse.

On appeal, counsel submits a brief, one new affidavit and evidence previously submitted.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

Battery or extreme cruelty. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The record reflects that the petitioner last entered the United States as a married nonimmigrant on December 14, 1996. One year prior to the petitioner’s entry into the United States, his Jordanian wife bore him a son in December 1995. According to the evidence on the record, the petitioner and his Jordanian wife divorced in Egypt on June 22, 1997. Three weeks after his divorce was final, he wed a United States citizen named Lisa Rodriguez. They separated one week after the marriage and divorced a year later on October 26, 1998. Seven months after his second divorce, his first former wife bore the petitioner a second son in Egypt on May 18, 1999. The petitioner asserts that the child was conceived in the United States while his first former wife was visiting. The petitioner began cohabitating with the alleged abusive wife in October 1998. They wed in February 1999. The petitioner’s third wife, the alleged abuser, filed a Form I-130 petition in April 1999. A daughter was born of the marriage on September 23, 1999. One month after the daughter was born, the petitioner’s third wife and daughter moved out of the family home and into a women’s shelter in October 1999. The petitioner and his third wife signed a separation agreement in December 2000. Two months later, the petitioner’s third wife withdrew the Form I-130 petition. The petitioner’s third wife commenced divorce proceedings in June 2001. The petitioner was placed into removal proceedings on August 2, 2001. On August 6, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that he has met this requirement, he was requested on September 19, 2001, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. In response to the request for additional evidence, counsel for the petitioner submitted the following:

- An interim report of a Guardian Ad Litem appointed to represent the best interests of the petitioner and his wife's daughter.
- Psychiatric records of the petitioner's wife.
- A copy of the petitioner's wife's deposition taken in connection with their divorce proceedings.
- The petitioner's affidavit dated November 16, 2001.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen spouse during the marriage, the director denied the petition.

On appeal, counsel for the petitioner resubmits previously provided documentation and another affidavit of the petitioner. In his affidavit, the petitioner reasserts that his wife "attacked" him "in excess of ten times."

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen wife. The evidence consists of the following:

- The petitioner's statements in his affidavits and on the Notice of Appeal, Form I-290B.
- The petitioner's wife's medical records.
- A Stark County Sheriff's Office incident report dated December 8, 1999 that provides that the petitioner's wife reported that she and the petitioner had engaged in a verbal altercation.
- A transcript of the petitioner's wife's deposition.

In his decision, the director noted that "it was unclear from the documentation submitted just exactly who is or has been abused."

The petitioner offers as proof of the alleged abuse he endured, his "disturbed" wife's medical records and deposition in which she admitted that she hit and kicked the petitioner. In an affidavit dated November 16, 2001, the petitioner asserted that although his wife accused him of abuse, she is deeply disturbed, suggesting that her testimony should be discounted. The petitioner's assertion that his wife's admissions that she hit him are credible whereas her statements that the petitioner abused her are not, is irreconcilable.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, court officials, counselors, or social workers. The single sheriff's incident report merely stated that the parties had a verbal altercation. The petitioner failed to submit evidence that he sought psychological or medical treatment for any abuse he endured. He did not submit evidence that he sought refuge in a shelter or elsewhere. He did not obtain an order of protection against his wife or take other legal steps to end the abuse. He did not provide CIS with photographs of injuries. He did not allege he sustained any injuries. His affidavits are insufficiently specific as to the exact harm he suffered from his wife. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel for the petitioner asserts that by virtue of obtaining custody of their child, he has established that the petitioner is the subject of battery or extreme cruelty. Counsel further asserts that the voluminous medical records of the petitioner's spouse are probative to the disposition of his Form I-360 petition. The fact that the petitioner obtained custody of his child and the fact that his former wife has an extensive psychiatric history are not evidence that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse.

Beyond the decision of the director, the petitioner failed to establish that he had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). He submitted copies of two divorce decrees in connection with his third wife's Form I-130 petition. The purported divorce decree terminating his first marriage to a Jordanian woman was not submitted with a certified translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). As noted above, the petitioner divorced his first wife six months after he first arrived in the United States, and married his second wife, a United States citizen, within 30 days. The petitioner and his first wife conceived a child while he was married to his second wife and the child was born after he wed his third wife. The facts suggest that he came to the United States with the intention of entering into a marriage with a United States citizen for the primary purpose of obtaining an immigration benefit, i.e., permanent resident status; thereby seeking to circumvent the immigration laws. A marriage entered into for the primary purpose of circumventing the immigration laws is not recognized for the purpose of obtaining immigration benefits. *Matter of Laureano*, 19 I&N Dec 1 (BIA 1983).

Finally, the allegations that the petitioner abused his United States citizen wife call into question whether the petitioner established that he has good moral character. According to the medical reports submitted, the petitioner's third wife reported that the petitioner was abusive towards her. In her deposition, she stated that the petitioner had pulled a gun on her twice.¹ Since the appeal will be dismissed for the reasons stated above, this issue will not be discussed further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ Deposition of Debra Abdelquader on October 30, 2001, page 14, line 9.